IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

DONALD A. LABELLE, as
Personal Representative
of the Estate of
CHRISTINE LEZZO LABELLE,
Deceased,

Plaintiff,

v. No. 2:98-3235-23

PHILIP MORRIS, INCORPORATED,
et al.,

Defendants.

CONDENSED TRANSCRIPT

TELEPHONIC/VIDEO DEPOSITION OF
RICHARD J. SEMENIK, Ph.D.
9:00 a.m. - 12:12 a.m.
July 20, 2000
Richmond, Virginia

REPORTED BY: Joseph C. Spontarelli

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Telephonic/video deposition of RICHARD J. SEMENIK, Ph.D., taken by and before Joseph C. Spontarelli, Notary Public in and for the Commonwealth of Virginia at large, pursuant to Federal Rules of Civil Procedure and by notice or agreement to take depositions; commencing at 9:00 a.m. on Thursday, July 20, 2000 at the law offices of Hunton & Williams, 951 East Byrd Street, Richmond, Virginia.

APPEARANCES:

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Also present:

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Marc McCrudden, Videographers

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PROCEEDINGS

9:12 a.m.

RICHARD J. SEMENIK, Ph.D.,
was sworn or affirmed and testified as follows:

BY MR. KLOK:

Q Good morning, Dr. Semenik. How are you doing?

A Good, thank you.

Q Can you hear me okay?

A I can hear you just fine, thank you.

Q Let me ask you first just to state your name and address.

A My name is Richard J Semenik. Home or office address?

Q Office address is fine.

A Montana State University, Reid Hall, 412, Bozeman, Montana 59717.

Q Mr. Semenik, are you under any medication today?

A No, I am not.

Q If we could, I would like to hand you over an exhibit -- I guess it should be marked as Exhibit 1 for this deposition, the Notice of

Videotape Deposition Duces Tecum. Do you have that in front of you?

A I do now.

(Semenik Exhibit No. 1 Marked for Identification.)

BY MR. KLOK:

Q Have you seen this document before?

A I saw this document yesterday.

Q Have you seen the request of documents in regard to this deposition?

A No, I have not seen the request.

Q Did you help gather any documents for submission to us in preparation for this deposition?

A No. Those documents were in the possession of the law firms, and they forwarded them directly to you is my understanding, the list.

MR. DAVIS: Rhett let me just interject. The Schedule A or Exhibit A which lists the actual request is not attached to this exhibit, just for your information.

MR. KLOK: I just realized that. I think what we have on the record is sufficient to establish that the documents were gathered by the attorneys.

BY MR. KLOK:

Q Dr. Semenik, did anyone contact you on gathering information that you would like to have admitted into this deposition as part of your reliance materials?

A Yes.

Q Are there any updates to the materials that have been submitted thus far?

A No. Updates only in the sense that there are changes to my Curriculum Vitae. That was a version from March or April of this year and there have been some changes.

Q We'll get to that shortly. I'll give you a chance to tell me what those changes are.

MR. DAVIS: Rhett, I'm sorry to interrupt but for clarity in case we are not covering the waterfront here and perhaps you will get to that, there are some changes and, I think, a couple of corrections to the reference materials or reliance materials that Dr. Semenik can talk to you about.

There is also the additional materials that we submitted to him for review which are five deposition transcripts which I have on a list here.

MR. KLOK: I guess at this point it would probably be a good idea to go ahead and just attach that list of depositions as Exhibit No. 2.

(Semenik Exhibit No. 2 Marked for Identification.)

BY MR. KLOK:

Q Dr. Semenik, do you have that exhibit before you?

A Yes, I do.

Q What is that document?

A It's a document titled Additional Materials Provided To Dr. Semenik.

Q When did you receive the materials listed there?

A I received those yesterday around midday.

Q What materials are they?

A They are five depositions.

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Q Could you read those into the record, please?
A The depositions of Anthony Lezzo, Mafalda Lezzo, Regina Semanchick, Barbara Todisco, Diane Rufo. That's the five.
Q I'm sorry, I didn't get them all. Could you repeat the one after Mafalda Lezzo, please?
A Yes. Regina Semanchick.
Q And then the last two.
A Barbara Todisco and Diane Rufo.
Q Have you had an opportunity to read or go over those depositions?
A Yes, I have.
Q When did you do that?
A I did that yesterday afternoon and last night.
Q Dr. Semenik, have you ever testified or been involved in litigation before?
A Yes.
Q Let's start with being involved in litigation. Have you ever been a plaintiff or a defendant in litigation?
A No, I have not.
Q Have you ever been involved in

litigation outside of expert testimony?
A No, I have not.
Q Let's turn to your expert testimony. How many times have you testified as an expert?
A Depositions and trial testimony?
Q Correct.
A I believe that is ten or 11 times. I'm not exactly clear on the number. I haven't reviewed that.
Q How many times have you been involved in litigation -- again, you may not recall exactly -- to the best of your understanding and recollection how many times have you been involved in litigation where you haven't testified?
A Where I have not testified? I would say three or four times.
Q So approximately you have been involved in about 14 separate cases or so to date?
A I think that's in the ballpark, 14 or 15.
Q That's in your capacity as an expert, correct?

A That's correct.
Q What particular fields were you testifying in as an expert in those cases? Was it always about the same topic?
A My expertise has been called on always for the same areas, consumer behavior, general marketing and advertising.
Q Have you ever testified in litigation not involving the tobacco industry?
A Yes.
Q What case was that or cases?
A There were three different cases. One involved Godfather's Pizza and Godfather's Restaurant. You might guess what that was about. Another involved International Games Technology and Games West in Las Vegas, Nevada. A third involved ERA Real Estate and Help-You-Sell Real Estate. Those were three non-tobacco related cases I have been involved in.
Q What were the approximate dates? Let's start with the Godfather Pizza litigation.
A That would have been approximately 1978.
Q Do you remember what state that was in?

A That was in Utah.
Q Was that in state or federal court?
A That was in federal court.
Q The International Technology case, was that in Nevada?
A That was in Nevada.
Q Was that state or federal court if you remember?
A I'm sorry, I don't recall.
Q What year was that?
A Approximately 1993, maybe '94.
Q And the ERA Real Estate case, what state was that?
A That was also in Utah.
Q What year, approximately?
A I believe that was mid '80s, late '80s, '87, '88, somewhere in there.
Q In those cases did you -- let's start with Godfather's -- let me ask a global question first, it might save time. Did you testify in all those cases as a defendant expert?
A No. The Godfather's case I was a plaintiff's expert. The ERA Real Estate case I was a plaintiff's expert. The International Game

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Technology case, I believe I was a defendant's expert.

Q In any of those cases did you have an occasion to work with attorneys that you then later worked with in subsequent tobacco litigation?

A No.

Q The same question as to law firms?

A Same answer, no.

Q Other than those three cases you mentioned to me, has the rest of your experience as an expert been involved with tobacco litigation?

A Yes, that's correct.

Q Did you start testifying as an expert in tobacco litigation with the Attorney General lawsuits?

A No, I started before that.

Q What was your first tobacco case that you were retained as an expert for?

A The first tobacco case was the Haines case.

Q That was a case tried in the State of New Jersey?

A That's correct. That was not a case

in which I gave -- that I gave testimony in. While I was named -- since I have been named the case has not moved forward. It was the first case for which I reviewed materials.

Q What was the next case you worked on after the Haines case?

A The Covert case.

Q In what state was the Covert case?

A Louisiana.

Q Was that filed in New Orleans?

A I'm sorry, I don't know.

Q Was that an individual case?

A Yes, it was.

Q And the Haines case was also an individual tobacco case?

A That is correct.

Q After the Covert case, what was the next case you testified in?

A I believe I started working on the Engle case; although I'm going to be less than precise at this point. It's been several years and I would have to go back and review names and years.

Q Around the time of the Engle case you got involved in more than one case?

A During the years '92, '93, '94 there was approximately one case a year then the Attorney General cases began. It was during that period where I would work on cases sequentially.

Q Let's start with the Engle case. I know that's a case that was filed in Florida, is that correct?

A That's correct.

Q And there was recently a very large verdict in that case, is that correct?

A Yes.

Q What other case did you get involved with around the time you got involved with the Engle case?

A I simply don't remember at this point. I would have to go back and review.

Q Was it an individual case or a case involving multiple parties?

A Also I don't remember that.

Q Were you involved in the Castano tobacco litigation case?

A I don't believe I was involved formally in the sense that I was named. Materials from the Castano case were provided to me. I was asked to review them and to give my

observation and opinion about some of the testimony in that case.

Q Were you deposed in that case?

A No.

Q What other tobacco cases other than Attorney General cases have you been involved in that we haven't talked about thus far?

A A case titled Kearney. Simon, Blue Cross/Blue Shield, Falise.

Q How many of those cases are ongoing?

A The last three I have cited are ongoing at the present time.

Q The Blue Cross/Blue Shield case, is that before Judge Weinstein in Brooklyn?

A Yes.

Q And the Falise, that would be the same court it's before at this time?

A Yes.

Q The Simon case, where is that?

A I believe that's in the same jurisdiction as well.

Q Is that an individual case?

A That is an individual case.

Q What about the Kearney case?

A The Kearney case was an individual

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case but did not go to trial.
Q Let's turn to the Attorney General lawsuits. How many of those state cases have you been retained as an expert for, or were retained as an expert for?
A I was retained for Texas, Mississippi, and then originally Florida, although that came to an abrupt halt and I don't remember the circumstances around that. I did continue developing materials and examining issues in Texas and Mississippi.
Q Were you ever told, and I realize a lot of those cases at that time were fairly active and there were many states that the tobacco industry was involved with -- were you told that you may be retained as an expert in other states as work required?
A Not that I recall.
Q Were you involved in the Washington state litigation at all?
A I believe I was, yes. I forgot that one. I was developing materials for Washington state as well.
Q Were you involved in the Minnesota case in any way?

A No.
Q Were you involved in the Oklahoma case in any way?
A No.
Q I realize that you may not remember all of them, but do you think that covers all of them, Texas, Mississippi, Florida, Washington?
A Yes. To the best of my memory, yes, I believe it does.
Q Is it fair to say that from 1992 forward -- it should have been '93 -- somewhere between 1992 and 1994 you have continuously been involved in tobacco litigation as an expert?
A Yes, that's fair to say.
Q Let's backtrack to 1994. What percentage of your time was spent working as an expert in tobacco litigation?
A When you say percentage of time, can you clarify how you want me to describe that?
Q I don't want it all year, I want your working hours; what percentage of your time would you spend on tobacco litigation?
A Approximately ten percent, ten to 15 percent.
Q In 1995 what percentage?

A It would be the same. I manage this part of my career very carefully. It would always be ten to 15 percent of my professional work time.
Q The very first case that you got involved with testifying as an expert in a tobacco case was the Haines case, is that correct?
A Yes; although I never did testify, that's correct.
Q How were you contacted, do you remember?
A Yes. I was contacted by two attorneys, Jan Johnson and Allen Purvis.
Q Do you know what law firm they worked for?
A I believe at the time Allen Purvis worked for Shook, Hardy & Bacon and Jan Johnson was working for Arnold & Porter.
Q How were you contacted?
A By telephone.
Q Do you know how they got your name?
A I'm not certain how my name -- I'm not certain how they got my name; no, I'm not.
Q Are there any other cases other than

the ones you mentioned that you're -- I guess we can talk about any other cases -- any other cases that you're involved with currently other than the LaBelle case and the other three you have identified, I think Blue Cross, the Falise and the Simon case?
A No, nothing that is active now.
MR. KLOK: If we could, I would like to mark as Exhibit No. 3 the bills for services and expenses. I think there are four pages.

(Semenik Exhibit No. 3 Marked for Identification.)

MR. KLOK: If we could go ahead and mark Dr. Semenik's CV, Appendix A, as Exhibit No. 4.

(Semenik Exhibit No. 4 Marked for Identification.)

BY MR. KLOK:
Q Dr. Semenik, if you could look at your CV which has been marked as Exhibit No. 4, do you

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have that before you?
A Yes, I do.
Q Can you identify that document for the record?
A Yes. This is my Vita.
Q Was this prepared by you?
A Yes, it was.
Q Is this the latest printed version of your Vita?
A Yes, it is. I have an updated version on my computer, but this is the latest printed version, yes.
Q If you could be so kind to provide that latest version to your attorneys and they can forward it to me that would be great.
A Yes.
Q I know we were talking earlier that there's been a move to Montana. Why don't we just go right to the obvious. Do you have a new position in Montana currently?
A Yes, I do. I'm now the Dean of the College of Business at Montana State University.
Q I suppose congratulations are in order for that.
A Thank you.

Q Are there any other changes as you sit here today realizing, of course, that you're going to send me your update, but are there any other significant changes on this Vita that you would like to note?
A Yes.
Under the first page honors and awards, in the year 2000 I was given the Distinguished Career Service Award from the University of Utah.
Under publications, section B, journal publications page six, there's an article that was just published titled Selling In Cyberspace, Why Brands Will Rule that appeared in a publication titled The Communicator.
I believe those are the only significant changes. There was a conference chair position, but I can provide that later on.
Q Understanding that's what you remember, we will have the update and that will be noted.
When did you get this new position in Montana?
A The position officially began July 1st. I was offered the position the first week

in May of the year 2000.
Q Your Ph.D is in marketing, is that correct?
A That is correct.
Q I note that you have a split allegiance between the University of Michigan and Michigan State University. Are you a Wolverines' fan or a Spartan fan?
A I'm a Wolverine all the way.
Q If we could, let's go over your work history and CV. Are you there?
A Yes.
Q What I noted, and I don't know if it's reflected elsewhere in your CV, have you ever worked in marketing outside of academia excluding your testimony as an expert?
A Yes, I have. It's not noted on my CV, only in the sense that this is an academic CV. I have done a considerable amount of consulting with private firms, but that is not noted on the CV.
Q What's the nature of your consulting work?
A My consulting work focuses primarily on branding strategies and advertising strategies

which includes consumer behavior analysis.
Q About when did you start doing that kind of work?
A I began immediately after I finished my Ph.D in 1976.
Q Is that something that you've done continuously since 1976 till the present?
A Continuously but in episodes maybe is the best way. Typically during any given year I will have an ongoing consulting project, but it wouldn't last an entire year.
Q Can you estimate the number of projects you've done since '76 until the present, a rought estimate of how many projects you've worked on?
A 12 or 14.
Q Any particular projects that you're particularly proud of or that are significant in your mind?
A I think they all have about the same level of importance to me. I believe they were all significant for the clients involved.
Q Which clients did you work for in those projects, if you can remember?
A I can remember a few of those off the

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top of my head. American Investment Bank in Salt Lake City; the van Gogh Museum in Amsterdam, Netherlands; Premier Resorts in Deer Valley, Utah; IBM in Salt Lake City; American Investment Bank in Salt Lake City; Repertory Dance Theater, a non-profit organization in Salt Lake City; Opera America in Washington, D.C; the Art Space Urban Renewal Project in Salt Lake City. Those are the ones that come to mind at the moment.

Q Are there any projects that you're currently working on?

A No. Given my new position I've put a hold on my consulting work for the time being.

Q What was the last project that you worked on?

A The last project would have been Premier Resorts International or Premier Resorts. I changed the name for them to Premier Resorts. That was the project basically.

Q When did you do that?

A I would say the dates were approximately January of 2000 to -- let me back up. It would have been about September of 2000 to February -- September of 1999 to February of 2000.

Q Dr. Semenik, how much do you charge an hour for your services?

A $200 an hour.

Q Do you charge differently for your expert testimony per hour?

A Testimony is charged at $250 per hour, yes.

Q Do you distinguish in your fee schedule between testifying for depositions or trial and just consulting work working on a case?

A Testifying for depositions and trial is $250 an hour. Doing research on a case is $200 an hour.

Q If we could look at Exhibit No. 3. Do you have that in front of you?

What is Exhibit No. 3, if you could identify that?

A This is bills for services and expenses.

Q Has there been any subsequent billings since the time we received these in front of you?

A No, there have not been.

Q Are these your bills?

A Yes.

Q Were they prepared by you or someone

in your office?

A They were prepared by me personally.

Q That's your signature, correct?

A Yes, it is.

Q It's on all three pages, the July 20th, the August 20th and the September 20th, correct?

A Correct.

Q In each one of your bills you itemize and distinguish between expenses and services, correct?

A Correct.

Q Have you sent any subsequent bills since these?

A No, I have not.

Q I assume you will have subsequent bills including yesterday's work, correct?

A That is correct.

Q When did you meet with your lawyers for preparation -- I guess they're not your lawyers -- but when did you meet with the lawyers in this case for the tobacco companies, or I guess Philip Morris specifically -- when did you meet with them in preparation for this deposition?

A Yesterday.

Q How long did you meet with them for?

A Approximately three hours.

Q What did you talk about?

A We simply talked about whether there was additional information I might have access to which resulted in these five depositions I read off to you earlier.

We spoke about the setting for the deposition. We discussed whether any of my perspectives on consumer decision making with respect to cigarettes and tobacco had changed as I was continuing to do my research.

Q In light of the new deposition transcripts that you stated earlier that you read yesterday, have any of your opinions changed since that time?

A No.

MR. KLOK: Why don't we mark as exhibit next Appendix B(1) which is entitled Statement of Opinions.

MR. DAVIS: Before we pull that apart, Rhett, you may want to do this anyway, but right now Semenik 4 consists of all of the disclosure materials including reliance

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materials, the CV, the opinions to be expressed. Do you want to separate those?

MR. KLOK: Off the record.

MR. CROLL: The time is approximately 9:44 a.m. and we are off the record.

(Discussion off the record.)

MR. CROLL: The time is approximately 9:45 a.m. and we are back on the record.

BY MR. KLOK:

Q Dr. Semenik, in your capacity as a testifying expert and understanding, of course, that somewhere in the '90s you began, '92, '93, '94, I'm not exactly sure, do you know exactly how much money you have been paid as a result of your expert testimony and services?

A I believe the total is approximately $450,000, 480,000 over the last eight or nine years.

Q Is that excluding expenses?

A That is excluding expenses, yes.

Q Let's turn to what's marked as Appendix B(1), Statement of Opinions. Do you have that in front of you?

A Yes, I do.

Q I will represent to you, Dr. Semenik, I don't know if you know this, but this was something that was handed to us by the lawyers for Hunton & Williams on March 1st of this year. It's your Statement of Opinions as of that date.

Do you recognize that?

A Yes, I do. I prepared this document.

Q Did you prepare it on your own, or did you have any assistance with the lawyers in preparing this document?

A No, I prepared this document. I did ask them what format it needed to be in. Since I have encountered this request several times I wanted to make sure it was in the proper format.

Q You have done several disclosures in the past, is that correct, Dr. Semenik?

A That's correct.

Q As you sit here today, is there anything different about this opinion or your opinion that you're prepared to testify about in this case?

A No.

Q Is this disclosure still an accurate and fair representation of the testimony you're

prepared to give in this case?

A Yes, it is.

Q What is the purpose of advertising cigarettes, Dr. Semenik?

A I believe your question was what is the purpose of advertising cigarettes?

Q Correct.

A The purpose of advertising cigarettes is the same as the purpose of advertising any brand, which is to alert consumers to the availability of a brand and the features of the brand relative to competitive brands in that market.

Q What is a marketing plan?

A What is a marketing plan?

Q Yes.

A Marketing plan is typically a very large and complex document which identifies for a brand the target market, the features of the brand that will be marketed to that target market, the pricing strategy, the distribution strategy and the entire promotional strategy as well as estimates of cost and anticipated revenues and profits.

Q Do you know what brands of cigarettes

Miss Christine LaBelle smoked?

A Yes. From deposition testimony I have some idea about the brands that she smoked.

Q What brands did she smoke?

A It's my understanding from these depositions that she smoked -- again to varying degrees of intensity or time period -- Trues, Marlboro, Marlboro Lights, Basics and Pyramid.

Q Are you aware of which manufacturers make those particular brands?

A I'm aware of Marlboro and Marlboro Lights being Philip Morris brands. I'm not as certain about True, Pyramid or Basics. Excuse me, at one point she also smoked Merits.

Q Are you aware of what manufacturer produced and distributes Merits?

A Merits is also a Philip Morris brand.

Q What is media strategy?

A Media strategy is a statement by a manufacturer of the advertising media through which they will try to reach customers with brand advertising.

Q I noticed in your CV you have some background in economics, is that correct?

A In the sense that I extensively

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studied economics in all my degrees, undergraduate, MBA and Ph.D, yes.

Q Sometimes language used in business schools is different than language used by economists, is that correct, but the concepts might be similar or the same?

A I believe there are very few conflicts between us, but I suppose there could be. I can't recall any at the moment.

Q Would it be fair to characterize the tobacco industry as an oligopoly?

A The definition of an oligopoly is that there are a few large manufacturers which hold the vast majority of market share. I would say it's fair.

Q Would you characterize the tobacco industry as a highly segmented industry? I'm sorry, that's a bad question. Let's strike that.

Would you characterize the cigarette market as a highly segmented industry?

A I would characterize the cigarette market as a market with multiple brands, developed for multiple target segments. In that sense I would call it a highly segmented market, yes.

Q What are the reasons for developing brands?

A The reasons for developing brands are to appeal to a particular target market in a way that is closer to their desires than competitive brands are.

Q Are there any different goals or strategies that an industry may employ in a highly segmented situation?

A I would like to clarify that question. An industry wouldn't employ strategies, individual firms within an industry would employ strategies.

Q The outlook for those firms within the industry, are their considerations different when their product is highly segmented?

A Well, the typical situation with highly segmented industries means that there are multiple brands which makes the marketing process more complex and more challenging.

Q In what way is it more complex and challenging?

A Since multiple manufacturers are marketing multiple brands, the competitive environment becomes very intense and marketers

will need to be extremely vigilant about understanding the market, researching the market, looking for opportunities for new brands and new target customer groups.

Q Is that a fair characterization of the state of the cigarette market in the United States?

A I believe it is, yes.

Q What's the difference between selective and primary demand?

A There is an important and very large difference between selective and primary demand.

Primary demand is the demand for an entire product category or for an entire industry, so the demand for automobiles, the demand for cereal, the demand for sports shoes would be categorized as primary demand.

Selective demand is the demand for an individual brand within a product category. In the sports shoe market the demand for Nikes versus Reeboks versus Adidas would be characterized as selective demand.

Q In your disclosure there's a portion where you state there's no evidence that tobacco brand advertising affects primary demand for

cigarettes or other tobacco products.

A Correct.

Q Do you recall that?

A Yes.

Q On what do you base this opinion?

A This opinion is based on the large body of literature in economics, both general literature about the nature of primary demand and literature specific to the tobacco industry.

MR. KLOK: Do we have that exhibit, that last one, which is the updated reliance list? Can we mark that as the next exhibit?

(Semenik Exhibit No. 5 Marked for Identification.)

BY MR. KLOK:

Q Are there any particular articles there, Dr. Semenik, that you can point to to help your opinion or bolster your opinion that we just discussed in the previous question?

A Yes.

Item number seven titled The Advertising Controversy: Evidence of the Economic Effects of Advertising dated 1981.

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Q Maybe for brevity sake, Doctor, just call the number of the item.
A All right. It would be item number seven, which is the one I just read.
Q You can go ahead. If you can identify others and just do it by the item it will probably save us a lot of time.
A Item number eight, item number nine, item number 19, item number 32, item number 66, 67, 160.

There may be others on this list. For example, in some of the texts I would have to review them again to see about their comments on -- whether they include comments on primary demand. For now those would be the ones I recognize going through this list.

Q In your opinion, Dr. Semenik, does advertising affect primary demand?
A Advertising can affect primary demand with innovations, meaning new products in the marketplace or sometimes referred to as immature products. Yes, it can.
Q How would you characterize cigarettes; is that a mature or an immature product?
A Cigarettes is a mature product

category.
Q How do you define a mature product?
A A mature product is a product that has been on the market for many years typically. More importantly, a mature product is a product whose features, uses and applications are well-known to the population in a market.
Q Let me ask you this: What are the universally accepted models of consumer decision making?
A Universally accepted models of consumer decision making come in many forms, actually. The reason you can describe models as universally accepted is that models which portray the way in which consumers approach decisions about product use and product choice, and include either a listing or a display of factors influencing that choice or those choices are universally accepted as representative of the consumer decision making process.
Q In your reliance materials, and I'm sorry I can't show you this, I don't intend to really put it in as an exhibit, but within your reliance materials there was a document with kind of a circle that said consumer decisions. On the

top it had factors influencing consumer decisions. There were a lot of lines and ovals with various headings. Do you know what I'm talking about?
A Yes, I do.
Q Are those some of the factors in deciding what kind of consumer decision model or that make up a consumer decision model?
A Yes.

The model you're referring to is a model that I developed and is issued with one of my textbooks as part of the instructor's materials as a way to teach students about the nature of consumer decision making.

That particular model, as you've described it, shows the consumer decision making in a central circle surrounded by various factors which can influence that decision or those decisions. Those are not all the factors of influence, but a representative set of some of the most important influences on consumer decision making.

Q I suppose each one of these factors could have a subset of other factors underneath it; there's these general areas like lifestyle,

peers, social class, culture, school, personality, is that correct?
A It's fair to characterize it that way, yes.
Q Let me just kind of go around the circle here, marketer controlled stimuli, church, needs and motives, race, values, attitudes, past experience, media, observation, situational factors, hedonic/experiential, peers, lifestyle, social class, culture, school and personality. I think I went around the circle. Does that sound right to you?
A Yes, it does.
Q When you talk about the book that you authored, is the title called Advertising II?
A Advertising, Second Edition, does include a version of that model as part of the instructor's materials, yes.
Q Was this a model developed by you?
A Yes, developed by me.
Q Is this the type of model that you're using for this case?
A Yes, it is.
Q In your disclosure you state that you will apply these models to consumer decisions

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including consumer decisions about tobacco and cigarettes. How do you apply this model to this case?

A Well, in this case we have an individual who was a smoker, Christine LaBelle, and the way in which you apply a model like that is to try to understand and learn as much about Mrs. LaBelle's personal history and life experience and lifestyle. Also, any information that's available about her decisions and behavior towards cigarette smoking.

Then using the model we can examine the extent to which she engaged in consumer decision making and the factors that influence her decisions about smoking cigarettes.

Q Did you come to any conclusions based on applying Christine LaBelle's facts to this model?

A Yes.

Q What were your conclusions?

A My conclusions were that Christine LaBelle was a very typical consumer with respect to cigarette consumption.

Q Does it state in your disclosure that consumer decision making is extremely complex.

It is influenced by countless numbers of factors that are much more influential than the information made available to consumers by the marketers of products?

A Yes. That's one of the statements from my Statement of Opinions.

Q That's kind of what we've gone over at this point, correct? When you look at this model and this chart, all these factors play a role in the decision making process according to you for buying products?

A Correct.

Q Then you can apply this in the case of cigarettes to the case of Christine LaBelle?

A Correct.

Q I think there's two circles that catch my interest in this particular graph I have here. One is the marketer controlled stimuli and the other one is media. I think in this graph you've made a subset of categories under those. Do you recollect that?

A Yes, I do.

Q Could you explain what marketer controlled stimuli is?

A Marketer controlled stimuli are the

tools available to a marketer to communicate with consumers the values of a brand that that marketer is offering in the marketplace.

Q Underneath this in the drawing, I guess, in the case of cigarettes, I don't know -- this seems to have application to most products -- it talks about packaging, advertising, promotion, personal selling and price, is that correct?

A Correct.

Q Are there other considerations?

A Typically, depending on the product category and the brand, there could be multiple others.

I didn't list the product itself or the brand, but that would be a given that the brand has features and those features would be part of what the marketer controls in affecting consumer decisions about brand choice.

Q And then under media we have news, magazines, radio, TV. Direct media, I guess that includes the Internet but I'm not sure.

A It does.

Q Again, those are the categories identified in this chart.

Are the categories both under marketer controlled stimuli and media, are those categories in your textbook?

A Yes. They are discussed extensively in the textbook, yes.

Q When you listed, I suppose, in your reliance materials this chart, did you do it specifically for cigarettes or was it more as a global perspective of the consumer decision model and this applies generally to all products?

A That model as it is portrayed was not offered only for cigarettes, it's offered as a model of consumer decision making generally.

Q Have you ever prepared a model that is only for cigarettes?

A No.

Q Graphically I suppose is what my question really is.

Have you ever prepared it graphically for only cigarettes?

A No, I have not.

Q I know you mentioned in marketer controlled stimuli and the subcategories that there would be different considerations for a particular brand. Did you ever apply this model

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to the brands that Miss LaBelle smoked?
A Well, the answer is yes in the sense that as I read deposition testimony and got some sense for Miss LaBelle's history and decision making with regard to cigarettes I learned about the factors that influenced her choice of brands, yes.
Q Did you walk through each one of these brands and apply this model?
A Not in the formal sense that I had the model in front of me, but in my mind as I was reading the depositions and the descriptions I had the model in mind, yes.
Q Is this the type of model that you can calculate via formulas and input the data and come out with a response?
A No.
Q This is a subjective model or objective? How would you characterize it?
A Well, all the models in consumer behavior are like this. There are none that quantify the influence of each factor for general consumer decision making.
The attempt is to be as objective as possible about how these factors apply. Of

course, since individuals like myself have to use the model and we don't enter numbers as a quantitive approach then there is some subjectivity, yes.
Q Would it be fair to say that this model is only as accurate as the information that you have available to assess, is that correct, assess it with?
A Yes. Presuming that you have accurate information, the model will only be as accurate as the information you've been given, correct.
Q Are you familiar with the theories in economics of perfect and imperfect information?
A I have a sense of what those are. If you can give me your definition then I'll let you know whether those are the ones I have in mind.
Q I think the general presumption, it's almost like a legal presumption of the reasonable man -- in economics there's a presumption of rational people and rational decision makers. That rationality is based on the presumption that people can make decisions based on perfect information. To the degree the information is imperfect then people aren't able to make completely rational decisions. Is that how you

remember that?
A But my understanding is that perfect information was described as the totality of all information available.
In consumer behavior analysis we analyze that dramatically differently than economists do. Rational decision making from a consumer behavior standpoint occurs at the point where the consumer himself or herself decides there is enough information to go ahead and make a choice.
Q Dr. Semenik, is that your complete answer?
A Yes.
MR. KLOK: Why don't we take a break and change the tape.
MR. CROLL: The time is approximately 10:15 a.m. This is the end of tape one.

(Recess.)

MR. CROLL: The time is approximately 10:23 a.m. This is the start of tape number two.

BY MR. KLOK:
Q Dr. Semenik, we were talking before the break about consumer decisions. Do you remember that?
A Yes.
Q I would like to turn, if we could, to what specific factual information that you've gleaned from this case have you applied to Christine's decision making process or applied to this model.
A Do you mean specific facts from the case?
Q Correct.
A Specific to Christine LaBelle?
Q Correct.
A That I have applied to the model, correct?
Q Right, to reach your conclusions.
A I will do it chronologically, although it really didn't come out of the depositions that way, it's the way I've recast it in my mind to apply it to the model.
Q That's fine.
A The summer before Christine's tenth grade in high school her best friend indicates

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that Christine came back from the summer family home and said that she had begun smoking and that she began smoking by pinching or stealing cigarettes from her sister, her older sister, and those were True cigarettes.

During that summer she and her friend continued to smoke but not regularly. Her friend indicated that they were smoking perhaps a pack a week because smoking was restricted in the school, forbidden by the teachers.

Christine sometime during that period also occasionally asked her brother, Anthony, for cigarettes and would go outside the family home to smoke those cigarettes.

She and her best friend as well as other peers at the high school would regularly go into the women's bathroom in the school and smoke cigarettes. At one point Christine was caught doing that and suspended from school for smoking cigarettes.

Christine hid her smoking behavior from her parents throughout high school. Her mother indicates that she did not know Christine smoked until sometime after she was married. Her mother restricted smoking to outside the home at

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that point because Christine's father had quit smoking by then.

Other information relevant to Christine's smoking behavior had to do with her brand choice. She smoked Marlboros apparently up until she met Donald, at which point she switched to his brand, Marlboro Lights. At some point they both switched to Merits.

When Donald quit smoking Christine continued smoking, but apparently at that point had switched to Basics and subsequently Pyramid cigarettes.

There are other related facts in the case. Just as a quick summary at this point, if we take the model of consumer decision making, what we see is that Christine was influenced by family and peers which is the classic scenario -- consistent scenario with respect to smoking initiation and choice.

She was influenced by her sister who smoked, her father who smoked. She obtained her first cigarettes from her sister. There is also testimony that at some point she would also occasionally pinch a cigarette from her father's pack. He was a Pall Mall smoker. Borrowed

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cigarettes or asked for cigarettes from her brother. Smoked with her peers at school.

We have family peers as primary influences in the decision process. When it comes to brand choice her husband was influential in that brand choice.

The model is applied in that way generally. Those would be some of the facts that demonstrate how Christine LaBelle is kind of a typical cigarette smoker both from initiation and continuation with brand choice.

Q You mentioned that there were other factual factors. Do you recall what those are?

A Not at the moment. I think if I went and reviewed the transcripts again there would be other related facts that I'm not recalling at the moment.

I'm trying to recall some facts from her younger sister, but I can't at the moment. There is some other information in there.

Q The primary basis or underlying information that you're basing that upon is the depositions of Donny LaBelle, Sr. and the other five depositions that you cited to me this morning?

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A That is correct. That, to my knowledge, is the only information about Christine available with regard to her life and her smoking behavior.

Q Your disclosure says that the literature on the initiation and continuation of tobacco use has found that peers and family are the predominant influence in an individual's decision both to use tobacco products and to continue to use tobacco products, is that correct?

A That is correct.

Q Can you point, looking again at that exhibit with your latest reliance materials, to what articles on that list you used to support that notion?

A Number 15, number 16, number 17, number 18, number 30, 32, 33, 53, 54, 55, 56, 60, 62, 71, 76, 94, 98, 100, 130, 146, 147, 148, 152, 154.

Q I missed that last one.

A I'm sorry, 154. 155, 158, 159, 170 171, 183. Those are the ones I recognize at this moment.

There are some others here that I

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believe may also have information in them to that point, but I couldn't recall precisely. I would have to review them again.

Q Would it be fair to say that what you identified are the most significant articles on that list?

A I wouldn't want to say that. There may be material in some of these others that are as significant or more significant than the ones I've cited. I would just like to leave it that there may be others on this list that I didn't recognize at the moment.

Q Your disclosure says that Christine LaBelle was more likely to have been influenced in her decision to smoke by her friends and family that smoked and not advertisements.

I don't know if this is an off-shoot from the last question, but is there any empirical evidence that you used to support that opinion?

A Yes.

Q What is that?

A Again, from the depositions of Donald LaBelle and Christine's mother, sisters and friend.

Q Would that also include the articles that you cited in the previous question?

A Yes. Those articles would talk generally about the initiation process and describe that advertisements did not play a role across several survey research efforts.

The information provided by her friends and family indicate that Christine LaBelle was not influenced by advertisements.

Q Dr. Semenik, if I could turn you back to the exhibit that has your invoices on it.

A Yes.

Q Specifically the July 20, 1999 invoice. Do you have that in front of you?

A Yes, I do.

Q There's mention there that you reviewed responses to Interrogatories. Have the Interrogatories in any way played a part in support for your opinion in dealing with Christine LaBelle being influenced by her friends and family, or do you remember?

A Unfortunately I don't remember. The answers to the Interrogatories I know were not inconsistent with my opinion, or did not change my opinion. Precisely the responses given I

would have to review that again.

Q Again, other than those depositions and those Interrogatories, what other information about the LaBelles have you received?

A I have not received any additional information other than those.

Q How do you define a peer?

A A peer can be defined very broadly to include all people with whom an individual has direct contact. It could include family, friends, relatives.

However, many marketers including myself prefer to separate out peers -- separate out family from peers and narrow the focus of peers to friends and acquaintances because family, in my opinion and in others' opinions -- family has a more -- family has a different kind of influence than friends have.

Q Could you explain to me the difference of influence of peers versus family?

A Peers will have typically a different realm of experience and value system than family members have. Relative to the kind of influence peers and family exert, peers may be offering one set of influences or exerting one set of

influences on a consumer's decision whereas family may be exerting a different set of influences.

I might add, it's also possible that friends and family or peers and family exert the same influence; that's also possible.

Q Having defined that, how did both Christine LaBelle's peers and family influence her smoking?

A In my opinion since she had a brother and a sister who both smoked, they were exerting a positive or role model influence. Christine's friends in school, the evidence suggests, were also smoking and reinforcing her behavior. I won't use the word encouraging her behavior because the evidence was not extensive enough to come, in my opinion, to that conclusion.

On the other hand, Christine's parents did not exert a countervailing influence with regard to smoking because in deposition testimony Christine's brother, sisters and mother all indicate that they never spoke to their children -- the children, the LaBelle children, it was never -- excuse me -- the Lezzo children were never talked to about smoking so family and peers

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in this particular case were exerting basically a similar influence on the decision process.

Q Was it significant to you that Christine's mother wasn't aware of her smoking until much later?

A It was significant to me, yes.

Q In what way?

A When an individual hides smoking behavior, in my opinion that suggests that that individual knows that parents or some other responsible adult like a teacher would not want them to engage in that behavior. Typically the reason is that the parent or teacher or other responsible adult will encourage the adolescent to quit because of health reasons.

Q Did it strike you as odd that Christine's mother wasn't aware of her daughter smoking even though she had been suspended for smoking in high school?

A There is, in my opinion, some controversy over that testimony. The younger sister is very clear about an episode where Christine was suspended from school and her mother said, don't tell your father. But when the mother is questioned directly about it she

has no recollection of the incident. I don't know how to interpret that other than the sister has one very clear recognition, the mother has a very different recognition or remembrance.

Q In your opinion, Dr. Semenik, at what age are teenagers drawn to smoking?

A It wouldn't be my opinion so much as the statistics show that most teenagers are drawn to smoking around the age of 14.

Q Does Christine LeBelle's smoking pattern fall in line with those statistics?

A Yes, it does.

Q In you opinion, talking about brand recognition and brand identification, is that something teenagers do?

A Most definitely teenagers are able to identify brands, yes.

Q Are you aware of any studies or do you have an opinion as to whether teenagers identify with brands which in large part they may use for most of their lives early on -- let me strike that question and start again.

Do you know whether or not teenagers identify with brands to such a degree in their teenage years that -- I'm not sure if I'm doing a

good job. Let me strike that again.

Do teenagers, in your opinion, identify with brands that they may end up using for the rest of their lives?

A Yes. There is literature on that.

Q At what point, in your opinion as an expert, do teenagers mostly identify with brands?

A The answer to that is typically an individual choice answer. We have some literature, for example, and I will clarify it for you -- my ability to predict which brand of laundry detergent you use will be greatly enhanced if I know what brand of laundry detergent your mother used. I can predict about 75 percent of the time what brand of laundry detergent is going to be your preferred choice if I know what your mother used. The same with hand smoke, dish washing liquid, a variety of products around the home.

There is some evidence in deposition testimony that the first cigarette that an individual tries is the first brand that's smoked for at least early on -- that individual's smoking behavior or smoking history.

Q When we talk about teenagers and

consumer behavior for teenagers, is a status of a brand an important consideration for them? What I mean by status, I mean the status that that particular use of a brand might bring them amongst their peer group.

A The word status -- yes, I'm glad you clarified that -- a teenager will want to smoke the same brand as peers are smoking because that is in many ways an aspect of the affiliation and the acceptance by the peers. It's also a matter of convenience. In fact Christine LaBelle's friend indicated that they would smoke whatever was available. Peer smoking tends to be focused on a few brands that are accepted within the peer group.

Q I noticed that you had mentioned that Christine's father smoked Pall Mall cigarettes but she didn't end up smoking Pall Mall cigarettes, is that correct?

A That's correct.

Q Do you remember what cigarettes she ended up smoking initially?

A The deposition testimony suggests that she began and stayed with Marlboro Reds early in her smoking career.

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Q Do you know whether Marlboro Reds was the motion popular brand of cigarettes at that particular time when she began?
A I haven't reviewed those brand shares for that period of time in the early '70s, so I don't know the answer to that question.
Q Is it your opinion, Dr. Semenik, that marketing has no influence on initiation?
A Well, it's my opinion that advertising does not play a role in smoking initiation, that's clear.
With regard to the entire aspect of marketing -- let's be clear that we're talking about a mature product category and we're talking about cigarettes, then my answer would also be no, marketing is not playing a role in that initiation decision.
Q I assume by that answer that you mean that you consider cigarettes to be a mature product.
A That is correct.
Q Why not in the case of cigarettes don't you think that marketing has an influence on initiation?
A I would like to clarify, it's not just

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my opinion that marketing and advertising don't play a role with cigarettes, it's any mature product.
Q My question is trying to focus on this case and cigarettes. If there's a distinction between any mature product and cigarettes, let me know.
The question still stands, how do you reach that conclusion in the case of cigarettes?
A I reached that conclusion in the case of cigarettes based on, first of all, both sets of literature you asked my to go through with respect to my reliance material list; first the economics literature and then secondly the literature about adolescent choice behavior.
The second would be polls and surveys, public opinion polls like Gallup Polls and my own research which asks people directly the role that advertising or marketing played in the decision to begin smoking. Anecdotal evidence from newspaper reports when adolescents are asked, newspaper reports or television news. Television and newspaper reports that ask adolescents kind of person-on-the-street interviews what influenced their smoking behavior to begin

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smoking and they will indicate peers and family not marketing issues or advertising.
I suppose that covers it because the literature that I referenced with respect to our identification of studies from my reliance materials includes a wide range of different types of studies.
Q Doctor, do you plan to testify about third-party phenomenon in this case?
A Which third-party phenomenon are you referring to?
Q How do you use the word or term?
A I would use the term in regard to this situation and other consumer situations the third-person effect which is commonly applied in this situation which says that consumers believe that advertising affects other people but does not affect them is the common and simple description of the third-person effect.
Q Is the third-person effect something that you've coined, or is it something that's used in your field?
A That's something that's used in the fields of advertising and consumer behavior.
Q I noticed that part of your reliance

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materials included the Means reports from two states. I call them Means reports because I think that's how you referred to them.
Do you know what I'm talking about?
A Yes, I do.
Q I think the two sets of Means reports were from the State of New York, maybe the City of New York, I believe, and the state of Pennsylvania. Do you have recollection of that?
A Yes, I do.
Q How did you intend to use those reports in your testimony?
A The Means reports are comprehensive compilations of school curriculum policy and instructions to teachers and textbook reports for the public schools in the states of New York and Pennsylvania.
I intend to use those to demonstrate that in the school systems where Christine LaBelle went to primary and secondary school, issues regarding personal hygiene which included discussions of tobacco and alcohol use were prevalent in those school curricula.
Q The reports are fairly extensive. Some of them begin in the 1890s and come up to --

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I think the cutoff point was 1997.
Were there any particular portions of that report that stood out more than others?
A Not that I recall. I would have to review them again.
Q As you sit here today there's not any particular text or textbook or legislation that stands out?
A Not that I recall at this moment.
Q Is it accurate to say that generally it was research that reflected legislation, school curricula and textbooks from schools from those states, public school system, I guess, and their state legislature, is that correct?
A That's correct.
Q Was this information that you were aware was available to you, or was initially prepared in preparation with Attorney General litigation?
A The Means reports I've been aware of for several years. I called directly to Professor Means and asked him if he had the states of Pennsylvania and New York available. He did and he sent them directly to mean.
Q Did you use utilize those reports in

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working in your AG cases, not those particular ones but did you utilize other Means reports?
A Yes, I did.
Q Going back to your Statement of Opinions, it states that a variety of other situational factors play into consumer decisions about tobacco use and cigarette smoking.
Could you describe what a situational factor is?
A Yes.
Q I think it's one of the factors that you included in your factors for influencing consumer decisions.
A That's correct. It would be represented on the chart you referred to earlier.
A situational factor is any non-routine event which would be primary to a consumer's choice at any point in time.
Q Focusing that on this case, are there any other situational factors given the information you reviewed that you are taking into consideration for Christine LaBelle?
A Yes.
Q What are those?
A I think we can consider that her

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initial encounter with cigarettes was really based on a situational factor as well as a family/peer influence.
The fact that she was at the family summer home and had the opportunity to pinch, steal, borrow cigarettes from her older sister was a situation where she was -- she took advantage of the opportunity to smoke cigarettes.
Another situational factor would be the influence of her husband's brand, Marlboro Lights. At some point her decision to switch brands was very much based on the situation where her husband was smoking a particular brand and she chose to.
I guess a third situation would be the time she got caught smoking in the school bathroom and was suspended. That would also have communicated information to her about smoking behavior.
Q Are there any others?
A Not that I recall at the moment.
Q Dr. Semenik, what is an advertising theme?
A An advertising theme would be described as the primary message contained in an

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advertisement.
Q Why are they used? Why do manufacturers have themes in advertising?
A Manufacturers try to strike on a theme in advertisements and advertising campaigns as a way to help consumers remember their brand as opposed to competitive brands.
Q Is an advertising theme of particular importance in a segmented market?
A In my opinion, yes.
Q So in the situation of cigarettes, do advertising themes play an important role in marketing those brands?
A I would say because of the highly competitive nature of the market then yes, advertising themes would be important.
Q In your disclosure you state that there is no evidence that color and imagery in advertising for cigarettes and other tobacco products influences non-smokers, young or old, to begin using tobacco. Is that correct?
A That's correct.
Q On what empirical evidence do you base that statement? Again, you can look through your reliance list and point to articles, if you

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could.
A I don't need to go through the reliance list again. The articles I would rely on would be the first set of articles we looked at with respect to primary demand. The reason is that the color imagery or themes of cigarette advertising do not affect individual's decisions to begin smoking. That is, they do not affect primary demand for all the reasons that are cited in the literature that I identified earlier.
Q Do you know what the nature and magnitude of advertising expenditures are for tobacco products?
A Yes.
Q What is it?
A The spending on advertising for tobacco products is approximately four hundred million dollars a year.
Q That's in current dollars as we sit here today for 1999 or 2000?
A Approximately. Actually the numbers will be out in about two weeks. We'll get the new numbers. It's approximately three- to four hundred million dollars in advertising.
Q Over what period of time?

A Annually.
Q Is there a distinction in advertising between advertising and promotion?
A Yes, there is.
Q Is there a distinction between advertising, promotion and public relations?
A Yes.
Q Do you know what is the nature and magnitude of the expenditures for all three of those categories combined?
A No. I would only know the number for advertising and promotion combined. The marketing discipline has not come up with a good way to measure and report public relations expenditures in any product category, not just in cigarettes.
Q When an industry issues advertising or a full page ads on positions, whatever they might be, is that considered part of the public relations budget or the advertising budget?
A My best guess is, and I know I'm not supposed to guess but just to give you a response, it would probably be put into the advertising budget because there would be a media expenditure and that would be reflected in the

advertising expenditures.
Q But you don't know?
A I don't know. Different firms report in different ways.
Q In your disclosure you state that advertising expenditures for tobacco products are not out of line with expenditures in other product categories, and that the level of expenditure reflects the fact that it operates in a cluttered and highly competitive advertising environment. On what facts do you base that opinion?
A I base that opinion on the annual report from advertising age that shows cigarettes, tobacco products rank well down the list of the most heavily advertised product categories.
Q I noticed in your reliance materials which I received there are several other ads that were not tobacco related. I'm wondering, are those some of the comparisons you're going to use in your testimony?
A Which ones are you referring to?
Q I recall several ads with people in medical garb. They seem to be of the vintage

type, circa 1950s and '60s, I'm not sure.
A There would be Coca-Cola ad and a Serta mattress ad.
Q Are you going to use that in any capacity in your testimony?
A I may. I don't know yet. It depends on the kinds of questions I'm asked.
Q What do those ads illustrate in your opinion?
A Those ads illustrate the tenancy at that point in time for marketers in various product categories to show medical people associated with the brand.
Q I note there's a few ads -- there were two ads of Marlboro, one of Marlboro filter cigarettes and another one of Marlboro country. Do you recall those?
A Yes, I do.
Q Let's start with the Marlboro filter cigarette how, how are you going to use this ad in your testimony?
A That ad is part of a series of ads which shows that the imagery of western United States, outdoors, cowboys was used by Marlboro but was also used by many other marketers of

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A That information is available from several sources. There are several displays of the history of the Marlboro campaign which would take it through the '70s and '80s when Miss LaBelle was smoking Marlboro products.

Q Do you have that information for Basics?

A No, I don't have that information for Basics as yet, no.

Q Do you have that information for True?

A No.

Q Do you know where to get that information for True?

A I don't, but I have done this kind of research before so I will track it done. I may request it from the law firms if they have a way to provide it to me in an expeditious way.

Q When you talk about ad campaigns, I suppose you're going to look at old ads during that era, is that correct?

A Yes.

Q Is there anything else that you're going to do, any other type of information you're going to take into consideration that is either from the industry or about the industry?

A My intention at this point is to locate advertisements.

Q Are you going to do it for all the brands that Miss LaBelle smoked?

A I intend to do it for all the brands she smoked that I have information about. Those are the ones that I identified earlier.

Q Will your research involve requesting any internal documents from the industry?

A No.

Q Are you aware that much of that information of internal documents is available on the Internet?

A I am aware it is available on the Internet.

Q What is a strategic influence in advertising?

A A strategic influence?

Q Correct.

A That wouldn't be a standard term. For example, you wouldn't look that up in the back of an advertising book in itself glossary.

A strategic influence would be, if I had to define it, which I think you're asking me to do --

Q Maybe my next question will help contextualize it.

In your disclosure it states you will testify about brand advertising and the various strategic influences of advertising. What does strategic influences mean in that context?

A In that context it means that advertising plays a role in the marketing effort of an organization, and its role can be well-defined relative to product design, pricing strategies and distribution strategies.

Q How do you plan to testify in Christine LaBelle's case about the brands that she smoked?

A I plan to identify them, and the chronology as best as I can piece it together with respect to her brand choice and then her brand switching behavior.

Q Do you have any conclusions on that statement as of today that you can share with me?

A No.

Q Is that going to be contingent on your subsequent research that we discussed earlier?

A It will be dependent on my continuing research and my continuing thought processes as I

try to analyze Christine LaBelle's behavior.

Q How is tobacco brand advertising an important communication between the company and its consumers?

A How is it important?

Q Yes.

A It is important because, as I alluded to earlier, advertising plays a specific role in the marketing process for a brand. Advertising for a tobacco brand is no different from advertising for other consumer product category brands. It serves the role of informing consumers about brand availability, and informing consumers about features of a brand relative to competitive brands.

Q Do you have any evidence to support the notion that cigarette brand advertising specifically is for one of three things only, brand differentiation, brand loyalty and brand shifting?

A That would be a standard representation of the purpose of brand advertising, yes.

Q I think you have probably already given me the information on the list of reliance

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materials in that exhibit that you would use to support that, but let me ask you that question again. What items in your list would you use to support that conclusion?

A I think we're about at the end of a tape and I wouldn't want to go over with that. Maybe I should ask the reporter to switch tapes.

MR. CROLL: The time is approximately 11:23 a.m. and this is the end of tape number two.

(Recess.)

MR. CROLL: The time is approximately 11:34 a.m. This is the beginning of tape number three.

MR. KLOK: Could the court reporter please read me the last question and answer?

(Reporter read from the record.)

BY MR. KLOK:

Q Dr. Semenik if you could, please?

A We have to read the question before that one.

MR. KLOK: Court reporter, please read the question before that.

(Reporter read from the record.)

BY MR. KLOK:

Q I think we were discussing, Dr. Semenik, the notion, at least in your opinion, that cigarette advertising is used only for three things, brand differentiation, brand loyalty and brand shifting. I was trying to see whether or not you could point to articles or evidence that you submitted to us already that supports that.

A Well, that's a very broad perspective in the advertising industry and in academia in advertising. I don't know that any one or few sources of information listed here would identify that specifically. I can say that none of the sources here would dispute that.

I think if you went to any of the advertising texts, and I could find one or two quickly perhaps -- I'm looking through the list right now so bear with me. I think item number one, the consumer behavior text by Peter & Olson would support that. The Pride & Ferrell text,

item number ten.

Q Is that the end of your answer?

A There's one other one I'm looking for. It's the Gerard Tellis text which I can't seem to find on here.

Q I apologize for that, but I can't see you.

A Right. I believe the text is titled Advertising and Promotion by Gerard Tellis. I don't know what the number is. I'm not finding it quickly so I apologize for that as well.

In those books the reference to differentiation, brand loyalty and brand switching would be discussed as typical and primary roles for the advertising effort.

Q In any of those texts is it talking about brand loyalty, et cetera, differentiation in a general sense particularly about cigarettes?

A No, it would always be in a general sense.

Q Do you plan to do any more research to help support that opinion for your testimony in this case, Doctor?

A Not specifically. It's possible the research I do in this case will allow me to find

items that support that, but I'm not going to pursue that topic specifically, no.

MS. TYLER: Rhett, the Tellis text that Dr. Semenik referenced is item number 143.

MR. KLOK: Thank you.

BY MR. KLOK:

Q Doctor, in your disclosure you state that you are expected to testify about the communication model of source, message, channel, receiver and feedback. What does that mean?

A There's a widely used and accepted model of communication that portrays the process as beginning with a source. That source creates a message, sends the message through a channel which is sent to a receiver and the receiver provides feedback along with other feedback to the source and the process begins again with a revised message and a revised channel.

That's a model of communication that developed in the communications discipline, emerged in the 1950s and has persisted as a reasonable representation of how commercial communication works as well as interpersonal communication.

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Q Please explain, if you could, how you intend to apply that model to the information environment in Pennsylvania?

A I plan to use that model in a way that demonstrates that the information environment in Pennsylvania is no different from the information environment in general; so that consumers in Pennsylvania would have had available to them information about cigarettes and tobacco products like any other consumer in the United States.

Q Aren't different marketing strategies devised in the United States by region or sometimes even by state?

A They can be, yes.

Q When we talk about nationwide available consumer items, isn't there different marketing strategies pursued for particular brands by region and state in some cases?

A In some cases, yes.

Q So when you say that there's no significant difference in Pennsylvania, what do you mean by that?

A This particular paragraph from my Statement of Opinions is focusing more on the widely disseminated information regarding health

effects and the addictive nature of cigarette and tobacco products rather than focusing on brand advertising for cigarettes.

Q In your opinion, what was the state of Pennsylvania?

A I'm sorry, the state of Pennsylvania meaning the information environment in Pennsylvania?

Q What was the information environment like in the state of Pennsylvania?

A It was typical of other states where newspaper articles, school curricula, families discussing health effects of cigarettes or communicating to children their feelings about cigarette smoking. It was typical of other places in the United States.

Q When you talk about the items you just discussed, did you use the Means report from Pennsylvania as your primary source of information?

A The Means report was one source. Other reports were -- if you notice on the document called Services and Expenses, I refer there to locate materials for culture and environment analysis for Pennsylvania and New

York in the August 20, 1999 invoice. That would have been part of my research to identify the cultural and other aspects of the environment in the state of Pennsylvania and New York.

Q In making that assessment I'm going back to your consumer decision model and again looking at the ring of items around consumer decisions, it would be important to have information from each one of these rings, would it not, lifestyle, peers, hedonic/experiential, situational factors, et cetera?

A To the extent that I can locate information on every one of those or others, yes, it's important to have as much information as possible.

Q I'm curious, there's one of these categories called hedonic/experiential, and I know in the law we talk about hedonic damages. What do you mean by hedonic/experiential?

A In marketing language hedonic and experiential consumption has to do with an individual's motivation to buy brands and consume them because it feels good -- that would be the hedonic part -- or the experience is pleasant and pleasurable and one that they would like to

repeat again.

Q In your disclosure statement you state it is clear that the claimed adverse health effects and addictive nature of cigarettes and tobacco were effectively communicated to Pennsylvania consumers. How did you reach that conclusion?

A That conclusion was reached through -- the Means reports was one source of information. The materials on culture in Pennsylvania and New York was another.

Pennsylvania newspapers carried the kinds of stories about health risks and discoveries with regard to adverse health effects of tobacco, Surgeon General's reports; all those kinds of things were widely disseminated in the state of Pennsylvania as they were throughout the United States.

Q How did you verify whether or not Surgeon General's reports were widely available in the state of Pennsylvania?

A I might clarify that. My comment meant to suggest that the report about the Surgeon General's reports being released would be covered in newspapers in the state of

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Pennsylvania.

I did not examine whether the Surgeon General report itself was available at public libraries.

Q Did you find any evidence, when we talk about Christine LaBelle, whether or not she had access to this information that was widely available in Pennsylvania?

A The only information I have with respect to Christine LaBelle is that she was in the public school system in the state of Pennsylvania, and the curriculum there would have included discussions about the adverse health effects of tobacco products.

Q Do you have any information or knowledge, factual information or knowledge, on which to verify whether or not Miss LaBelle was ever taught the materials on the curriculum?

A That I could not know.

Q Or whether or not her teachers ever emphasized any information regarding smoking and health?

A No, only that the curriculum mandated that that be true; that's the only information I have.

Q Essentially as you sit here today, you don't know whether or not she was taught that at all?

A No.

Q Dr. Semenik, do you have an opinion as to whether or not advertising undermines health warnings or information regarding cigarettes?

A Yes.

Q What is that opinion?

A My opinion is that advertising does not undermine the health warnings with respect to cigarettes.

Q Why do you say that?

A There are two bases for that opinion. First of all, cigarette advertising carries a health warning itself so it will be a reminder to consumers who view cigarette advertising.

Secondly, it has been a long-standing and regularly verified fact that consumers are highly skeptical of advertising in general and are able to discern quite clearly that advertisers have a vested interest in promoting only the positive aspects of their brands, and that there are risks and hazards with various products that consumers are clearly aware of.

Q What is your understanding of why there's a health warning on the packages of cigarettes? How did that happen?

A I think the simple answer is that the government mandated that a health warning appear.

Q With products that have potential deleterious effects, do the manufacturers have certain ethical considerations and obligations to their consumers?

MR. DAVIS: Objection to form.

THE WITNESS: Do I answer?

MR. DAVIS: Yes.

THE WITNESS: I believe that the posture taken with respect to that is that if a hazard is so widely known that a manufacturer's comments about that hazard would add no more knowledge to a consumer's awareness, then it won't be unethical -- considered unethical not to alert them to that.

For example, all of us are aware that it is possible that an airplane can crash when you get on it, but your ticket does not say warning, it's possible this airplane could crash or that a skateboard is a known

hazard to individuals using it. That product also does not carry a warning on it because those hazards are clear and obvious to consumers who might choose to use that product.

BY MR. KLOK:

Q I'm not thinking about what the consumer knows or doesn't know, I am purely talking about the ethical responsibility of a manufacturer in question and my question is, does that relieve the manufacturer of their ethical responsibility?

A And I was being responsive to that in saying that when a product category has such known and obvious health risks then it is not considered unethical not to make that blatantly clear.

We could go through a long list of products where each of us is aware that there's some obvious hazard in using that product, but it would not be informative to consumers to alert them to that.

For example, the most hazardous product according to the national safety --

MR. DAVIS: Consumer Product Safety

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Commission.
THE WITNESS: -- Consumer Product Safety Commission, thank you very much, is stairs. More people get hurt going up and down stairs than using any other product in the United States, but stairs don't have warnings on them and there would be no good way to do that unless we wanted to start a national campaign with public service announcements.
So, is it unethical that when a house is built there's not a plaque on your house that says warning, stairs are hazardous to your health? I don't think so.
BY MR. KLOK:
Q When we start talking about hazardous products, certainly there is more weight attributed to those which are more hazardous than others, isn't that true?
MS. BONEY: Objection to the form.
MR. DAVIS: Objection to the form. I don't understand it.
THE WITNESS: I don't understand the question either. I wonder if you could state it a different way.

BY MR. KLOK:
Q Certainly in the realm of products, which as you put it, there are open and obvious hazards that everyone is aware of. There are some that are more hazardous than others, is that correct?
A I think we could agree that some are more hazardous. A skateboard is more hazardous than a fork.
Q As the product, let's say for example, explosives, everybody knows that explosives are extremely hazardous if not lethal, correct?
A Yes, I would agree with that statement.
Q In spite of that, the warning on the packaging of explosives is everywhere, isn't that correct?
A I don't know. I've never bought explosives so I don't know if they carry a warning or not. I'm sorry, I couldn't verify that.
Q Would it be fair to say that the manufacturer of explosive materials bears a certain ethical obligation to his consumers even though he's well aware of the fact that they know

it's explosive to somehow warn his consumer of the nature of his product?
MR. DAVIS: Objection to the form of the question.
THE WITNESS: In my view of that situation I would say that the warning on the label of explosives, which I haven't seen but I presume it says warning, this product could kill you or is hazardous, would not inform the consumer of anything that the consumer did not know, which in my opinion in terms of ethical behavior I think that -- including the warning is reminding the consumer of the hazard.
Would it be unethical if that didn't appear? I don't believe that would be an unethical act on the part of that manufacturer.
BY MR. KLOK:
Q For initiators of that product, meaning people who are either not familiar with it or have never used it before or are too immature to even understand what it is, wouldn't there be an ethical obligation of the company to make sure that in that event that consumer would

understand what kind of product he's dealing with?
MR. DAVIS: Same objection.
THE WITNESS: Well, my point would be the same. Consumers, even new users of a product are going to know that an explosive is potentially hazardous to their health.
BY MR. KLOK:
Q Would that be true, Dr. Semenik, if I had a child who may not even know what an explosive is?
MS. BONEY: Object to the form.
THE WITNESS: In that hypothetical situation I suppose you're talking about a child one or two years old who apparently would get ahold of that product because there was some negligence on the part of an adult.
BY MR. KLOK:
Q Correct.
A If there's negligence on the part of the adult by allowing that child to have access to that cigarette -- to that explosive then I presume that there is the unethical behavior. Rather than the manufacturer's behavior there was

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some unethical, negligent behavior on the part of some adult person who gave the child access.

Q I guess we'll move on from that because I don't want to get involved in a legal discussion.

I suppose what I was driving at with that question was, it's foreseeable from the manufacturer's point of view -- certainly when they put their product into the stream of commerce its foreseeable that the product could come into contact to unweary children, isn't that right?

MS. BONEY: Object to the form.

MR. DAVIS: Objection, also.

THE WITNESS: Again, with negligent access provided to children then yes, there could be harm. There is some ethical negligent responsibility. Again, if we're bordering on legal terminology I'm not qualified to comment.

BY MR. KLOK:

Q I'm not asking you for a legal opinion in any way, I'm asking you just the ethical obligation in your capacity as a marketing expert of a company to inform their consumer.

MR. DAVIS: Objection to the form of the question.

THE WITNESS: I will rely on my same answer. If consumers are fully aware that an explosive can kill them, then putting that information on a product does not inform a consumer any more. You can't fill a full cup any fuller. That would be my answer.

BY MR. KLOK:

Q Would it be fair to say that because consumers know that explosive devices are so dangerous or understand the nature of the product that there's no need to put a warning on the label, on the device or on the product?

MR. DAVIS: Objection to the form of the question.

THE WITNESS: If the goal is to inform consumers that an explosive can harm you or kill you, then again it wouldn't add any more information to consumer knowledge so I don't know what purpose it would serve.

BY MR. KLOK:

Q Doctor, in preparation for this case have you reviewed any articles that show the

effectiveness of the warning on cigarette labels?

A Not with respect to this case, no.

Q Have you ever had occasion to review articles that show the effectiveness of warning labels on cigarette packages?

A I have read certain articles that were attempts to do so, but I found that the methodologies were fairly flawed and the conclusions were, in my mind -- in my opinion the conclusions were not properly drawn.

Q So did you disagree with the conclusions in some of those articles?

A Yes, I did.

Q Do you remember as you sit here today what articles those were?

A One article was by an author named Krugman and it appeared during the '90s.

Q Is that Dean Krugman?

A That is correct.

Q Any others?

A No, not that I can recall at the moment.

Q Do you remember where that article was published?

A That also I cannot recall at the

moment.

Q Have you ever offered in your consulting capacity or as an expert any testimony about warning labels?

A No, I have not.

Q Have you ever advised a client on how to appropriately convey warning information to a consumer or a customer?

A No.

Q Would you consider yourself a specialist in that area?

A I wouldn't consider myself a specialist in the area of warning labels per se. As warning labels constitute a part of the information environment, then I feel qualified to comment on how those warnings would be related to consumer decision making.

Q I think in your Statement of Opinions there's -- towards the end of it it says that you may also be asked to comment upon the opinions expressed by other witnesses.

As you sit here today, have you been asked to do that yet?

A No. I have not seen any expert reports or deposition testimony from plaintiff

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witnesses, so I've not been asked to do that.
MR. KLOK: I would like to take a five-minute break and review my information. I think I only have a few questions left. If we could, why don't we go off the record.
MR. CROLL: The time is approximately 12:01 p.m. and we are off the record.

(Recess.)

MR. CROLL: The time is approximately 12:12 p.m. and we are back on the record.

BY MR. KLOK:
Q Dr. Semenik, how are you doing?
A Good.
Q I hope to get you out of here before lunchtime.
Do you recall I was asking you questions about information available within the state of Pennsylvania?
A Yes, I do.
Q I also note that part of the reliance materials you have sent me includes the Means report from the State of New York, correct?

A That's correct.
Q Is your testimony the same with regards to New York with regard to those questions as it was with the state of Pennsylvania?
A Yes, it is. It was an oversight on my part actually not to include the State of New York in that paragraph on my Statement of Opinions.
Q Are there any states with which you did that assessment?
A Since Christine LaBelle lived briefly in the state of Virginia I also plan to look at -- I will not need the Means reports for the state of Virginia because she was past school age, but I will want to look at other factors in the information environment for the state of Virginia as well.
Q Are there any other states besides New York, Pennsylvania and Virginia?
A No.
Q As for New York, your opinion is the same for Virginia, I suppose you haven't -- have you formulated an opinion about Virginia as well?
A No, not yet.

Q So that is something you will develop but was less significant to you because she wasn't in school then?
A Correct.
Q If I mischaracterized that, please correct me.
As you sit here today, is there anything about New York and Virginia which differs from your findings in Pennsylvania?
A I do not anticipate that there will be for Virginia. With regard to New York, New York and Pennsylvania would be as I -- New York will be as I characterized. Pennsylvania is no different in terms of an information environment with respect to the adverse health effects and addictive nature of cigarettes and tobacco. That information was widely available in New York as it was in Pennsylvania.
Q I have one last question.
When Michigan played Michigan State you were still a Michigan fan, uh?
A I was always a Michigan fan.
Q Even this year?
A Even this year. That was a tough game to watch.

Q Thank you very much, Doctor.
A Thank you.
MS. BONEY: I have no questions for this witness. Thank you.
MR. DAVIS: I don't have any questions either.
MR. KLOK: Thank you very much everyone. I do apologize with the mix up of the exhibits today. Thank you.
MR. DAVIS: No problem.
MR. CROLL: If there are no further matters, the time is approximately 12:15 p.m. and this deposition is concluded.

(Signature reserved.)

(Deposition adjourned at 12:15 p.m.)

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CERTIFICATE

I, RICHARD J. SEMENIK, Ph.D., do hereby certify that I have read the foregoing deposition given by me on Thursday, July 20, 2000, and I certify it to be a true and correct transcript of my said deposition. In the event that I desire to make changes in the form or substance of my deposition, said changes will be listed below along with my reasons for making them.

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Richard J. Semenik

Sworn and subscribed
to before me this
_____ day of _____, 2000

_____
Notary Public
My Commission Expires:

COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

I, Joseph C. Spontarelli, CCR, Notary Public in and for the Commonwealth of Virginia at Large, and whose commission expires October 31, 2003, do certify that the aforementioned appeared before me, was sworn or affirmed by me, and was thereupon examined by counsel; and that the foregoing is a true and correct transcript taken to the best of my ability.

I further certify that I am neither related to nor associated with any counsel or party to this proceeding, nor otherwise interested in the event thereof.

Given under my hand and notarial seal at Richmond, Virginia, this 21st day of July 2000.

_____
Joseph C. Spontarelli,
Court Reporter/Notary Public

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